

AMENDED IN SENATE APRIL 28, 2005

SENATE BILL

No. 896

Introduced by Senator Runner

February 22, 2005

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An act to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 896, as amended, Runner. Child support.

Existing law governs the collection of child support by local child support agencies, or by means of a writ of execution, a notice of levy, or earnings assignment order.

This bill would enact the Private Child Support Collection Act. These provisions would regulate the activities of private child support collectors, as defined. Among other things, the bill would ~~limit the child support that may be collected and the fees that may be charged by a private child support collector~~, require ~~that entity~~ *a private child support collector* to provide specified notices and disclosures to the child support obligee in a written contract and *additional information about child support payments* during the term of the contract, authorize the obligee to cancel any contract entered into with that entity in certain circumstances, prescribe the rights of the parties with respect to ~~local~~ child support agencies and other governmental entities, and prescribe procedures and remedies for enforcement of the provisions of the act.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 9 (commencing with Section 5610) is added to Part 5 of Division 9 of the Family Code, to read:

CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS

5610. ~~This chapter shall be known and may be cited as the “Private Child Support Collection Act.”~~

5611. For the purposes of this chapter:

(a) ~~“Child support obligation” means an obligation for the payment of financial support for a child under an order or writ issued by a court or other tribunal.~~

(b) ~~“Obligee” means the person identified in an order for child support issued by a court or other tribunal as the payee to whom an obligor’s amounts of ordered child support are due.~~

(c) ~~“Obligor” means the person identified in an order for child support issued by a court or other tribunal as the individual required to make payment under the terms of a support order for a child.~~

(d) ~~“Private~~

~~(a) For the purposes of this section, “private child support collector” means an individual or a person, corporation, attorney, or other nongovernmental entity who engages in the enforcement of is engaged by an obligee to collect child support ordered by a court or other tribunal for a fee or other consideration. The term does not include any of the following:~~

~~(1) An attorney licensed to practice law in this state.~~

~~(2) A government agency of this or another state designated to serve as a Title IV-D agency in accordance with Part D of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.).~~

~~(3) A contractor awarded a contract to engage in child support enforcement on behalf of a governmental agency of this or another state that is authorized by law to enforce a child support obligation; attorney who addresses issues of ongoing child support or child support arrearages in the course of an action to establish parentage or a child support obligation, a proceeding under Division 10 (commencing with Section 6200), a proceeding for dissolution of marriage, legal separation, or~~

1 nullity of marriage, or in post judgment or modification  
2 proceedings related to any of those actions.

3 ~~5612.—~~

4 (b) Any contract for the collection of child support between a  
5 private child support collector and an obligee shall be written in  
6 simple language, in at least ~~12-point~~ 10-point type, signed by the  
7 private child support collector and the obligee ~~and~~. The contract  
8 shall be delivered to the obligee in a paper form that the obligee  
9 may retain for his or her records. The contract shall include all  
10 of the following:

11 (a)

12 (1) An explanation of the fees imposed by contract and  
13 otherwise permitted by law and an example of how they are  
14 calculated and deducted.

15 (b)

16 (2) An explanation of the nature of the services to be provided.

17 (c)

18 (3) The expected duration of the contract, stated as a length of  
19 time or as an amount to be collected by the collection agency.

20 (d)

21 (4) An explanation of the opportunities available to the obligee  
22 or private child support collector to ~~terminate~~ cancel the contract  
23 or other conditions under which the contract terminates;  
24 ~~including those specified in Section 5613..~~

25 (e)

26 (5) The mailing address, *street address*, telephone numbers,  
27 facsimile numbers, and Internet address or location of the private  
28 child support collector for the purpose of communications  
29 between the collection agency and the obligee or any authorized  
30 agent of the obligee.

31 (f) ~~Statements substantially similar to the following:~~

32 (1) ~~“This contract terminates under certain circumstances. You~~  
33 ~~may request termination of this contract at any time prior to~~  
34 ~~midnight of the 15th business day after the date you sign the~~  
35 ~~contract. You may also request termination of this contract under~~  
36 ~~other circumstances that are described in Section 5613 of the~~  
37 ~~Family Code. To request termination of this contract, mail a~~  
38 ~~written, signed, and dated notice stating why you want to~~  
39 ~~terminate your contract to \_\_\_\_\_ (name of the private child~~

1 support collector) at \_\_\_\_\_ (address of the private child  
2 support collector).”

3 (2) ~~“This contract calls for us to collect money owed to you,  
4 and not money owed to the county or state. If some of your child  
5 support is owed to the county or state because you are receiving  
6 or have received program benefits from CalWORKs or  
7 Temporary Assistance to Needy Families, then we cannot collect  
8 that money for you. If you start to receive program benefits from  
9 CalWORKs or Temporary Assistance to Needy Families during  
10 this contract, you must tell us.”~~

11 (3) ~~“\_\_\_\_\_ (name of private child support collector) is  
12 not a governmental entity and charges a fee for its services.”  
13 support collector.~~

14 (6) *A statement that the private child support collector is not a  
15 government entity and that government entities in California  
16 provide child support collection and enforcement services free of  
17 charge.*

18 (7) *A statement that the private child support collector collects  
19 only money owed to the obligee and not support assigned to the  
20 state or county due to the receipt of CalWORKs or Temporary  
21 Assistance to Needy Families.*

22 (8) *A statement that the private child support collector will not  
23 retain fees from collections that are primarily attributable to the  
24 actions of a government entity or any other person or entity.*

25 (9) *A statement that the obligee may continue to receive, or  
26 may pursue, services through a government entity to collect  
27 support, and the private child support collection agency will not  
28 require or request that the obligee cease or refrain from  
29 engaging those services.*

30 (10) *A notice the private child support collector is required to  
31 keep and maintain case records for a period of four years and  
32 four months, after the expiration of the contract and may  
33 thereafter destroy or otherwise dispose of the records. The  
34 obligee may, prior to destruction or disposal, retrieve those  
35 portions of the records that are not confidential.*

36 (11) *A “Notice of Cancellation,” which shall be included with  
37 the contract and which shall contain, in the same size font as the  
38 contract, the following statement, written in the same language  
39 as the contract:*

40 *“Notice of Cancellation*

*You may cancel this contract, without any penalty or obligation, within 15 business days from the date the contract is signed or you receive this notice, whichever is later, or \_\_\_\_\_ (all other reasons for cancellation permitted).*

*To cancel this contract, mail or deliver a signed copy of this cancellation notice or any other written notice to \_\_\_\_\_ (name of private child support collector) at \_\_\_\_\_ (address for mail or delivery) no later than midnight on \_\_\_\_\_ (date).*

*I am canceling this contract. \_\_\_\_\_ (date)  
\_\_\_\_\_ (signature) ”*

~~5613.~~

~~(c) (1) An obligee may, by written demand, terminate shall have the right to cancel a contract with a private support collector in any of the following circumstances:~~

~~(a) Within within 15 business days of the later of signing the contract:~~

~~(b) After any 12 consecutive months in which the private child support collector fails to make a collection:~~

~~(c) Any time a state or local Title IV-D agency begins collecting on behalf of the obligee, provided those collections are completely independent of the private child support collector's involvement in the case:~~

~~(d) If, or receiving a blank notice of cancellation form, or at any time if the private child support collector commits a material breach of any provision of the contract or a material violation of any provision of this chapter with respect to the obligee or the obligor.~~

~~(e) For any other reason specified in the contract.~~

~~5614. A contract with a private child support collector shall terminate automatically when the contract term has expired or the contract amount has been collected.~~

~~5615. An obligee shall owe no fees after termination of a contract with a private child support collector, except a private child support collector may charge and collect its fee on child support collected after the termination of a contract if the payment is made to discharge, in whole or in part, a lien filed by~~

1 the private child support collector prior to the termination of the  
2 contract.

3 ~~5616. A private child support collector shall not enter into a~~  
4 ~~payment agreement with an obligor that forgives or that~~  
5 ~~compromises, in whole or in part, arrearages owed to the obligee~~  
6 ~~without the written consent of the obligee.~~

7 ~~5617. A private child support collector shall not impose a fee~~  
8 ~~or charge for any child support payments collected solely through~~  
9 ~~the efforts of other persons or entities, and any fees retained shall~~  
10 ~~be promptly refunded to the obligee upon proof that other~~  
11 ~~persons or entities were solely responsible for the collection.~~

12 ~~5618. A private child support collector providing services to~~  
13 ~~an obligee that has, or has had, a case pursuant to Part D of Title~~  
14 ~~IV of the federal Social Security Act with a county child support~~  
15 ~~agency shall provide notice of the contract to the county child~~  
16 ~~support agency.~~

17 ~~(a) If the notice includes a power of attorney signed by the~~  
18 ~~obligee requesting the county child support agency to change the~~  
19 ~~payment address to that of the private child support collector, the~~  
20 ~~county shall honor the request for change of address, provided~~  
21 ~~nothing shall prevent the obligee from revoking the change of~~  
22 ~~address at any time.~~

23 ~~(b) If the notice includes a power of attorney signed by the~~  
24 ~~obligee authorizing the county child support agency to release~~  
25 ~~payment records to the private child support collector, the county~~  
26 ~~child support agency shall release those records, including~~  
27 ~~information regarding amounts assigned to the county or state.~~

28 ~~(c) A private child support collector who incorrectly states the~~  
29 ~~amount of child support to be collected is not in violation of this~~  
30 ~~chapter if the private child support collector has not received~~  
31 ~~payment records from the state or county child support~~  
32 ~~enforcement agency pursuant to this section.~~

33 ~~(d) A private child support collector is not in violation of this~~  
34 ~~chapter if it collects any amount assigned to the county or state if~~  
35 ~~the private child support collector has not received payment~~  
36 ~~records from the state or county child support enforcement~~  
37 ~~agency pursuant to this section, provided the private child~~  
38 ~~support collector complies with subdivision (e) of Section 5619.~~

1     ~~5619. (a) A private child support collector shall not collect~~  
2 ~~support assigned to the county or state pursuant to Section 11477~~  
3 ~~of the Welfare and Institutions Code, or to any other state.~~

4     ~~(b) If funds contracted to be collected by the private child~~  
5 ~~support collector are subject to an assignment to the county or~~  
6 ~~state, the contract shall be suspended to the extent of the amount~~  
7 ~~subject to the assignment or in its entirety if the amount assigned~~  
8 ~~equals or exceeds the amount to be collected pursuant to the~~  
9 ~~contract.~~

10   ~~(c) A private child support collector who receives notice that~~  
11 ~~child support has been assigned to the county or state shall, upon~~  
12 ~~receipt of the notice, cease any further collection activities~~  
13 ~~related to the assigned support and shall pay over to the assignee~~  
14 ~~any moneys subject to the assignment, including any fees~~  
15 ~~collected on those moneys that are collected after that notice and~~  
16 ~~that are in the possession or control of the private child support~~  
17 ~~collector.~~

18   ~~5620. A private child support collector representing an~~  
19 ~~obligee with an open case pursuant to Part D of Title IV of the~~  
20 ~~federal Social Security Act shall ensure that all payments made~~  
21 ~~on behalf of the obligor are directed to the county child support~~  
22 ~~registry or state disbursement unit.~~

23   ~~5621. (a) A private child support collector shall maintain~~  
24 ~~records of all child support collections made on behalf of, and~~  
25 ~~disbursed to, a client who is an obligee, including:~~

26   ~~(1) The name of, and other identifying information relating to,~~  
27 ~~any obligor who made child support payments collected by the~~  
28 ~~private child support collector.~~

29   ~~(2) The amount of support collected by the private child~~  
30 ~~support collector for the obligee.~~

31   ~~(3) The date on which each amount was collected.~~

32   ~~(4) The date on which each amount due the obligee was sent to~~  
33 ~~the obligee.~~

34   ~~(5) The amount of the payment sent to the obligee.~~

35   ~~(6) A copy of the order establishing the child support~~  
36 ~~obligation under which a collection was made by the private~~  
37 ~~child support collector.~~

38   ~~(7) Records of all correspondence between the private child~~  
39 ~~support collector and an obligee and obligor in a case.~~

~~(8) Any other pertinent information relating to the child support obligation, including any case, cause, or docket number of the court having jurisdiction over the matter and official government payment records obtained by the private child support collector on behalf of, and at the request of, the obligee.~~

~~(b) The records required under this section shall be maintained by the private child support collector for a period of four years from the date of the last child support payment collected by the private child support collector on behalf of an obligee.~~

~~(c) A private child support collector shall safeguard case records in a manner reasonably expected to prevent intentional or accidental disclosure of confidential information pertaining to the obligee or obligor, including providing necessary protections for records maintained in an automated system.~~

~~(d) A private child support collector shall timely inform clients of all legal orders, hearings, and notices intended for the client that have been sent to the private child support collector by a government child support enforcement agency.~~

~~(e) A private child support collector shall provide to an obligee, via telephone or secure Internet access, or by mail at the obligee's request, the information maintained pursuant to paragraphs (1) to (5), inclusive, of subdivision (a).~~

~~5622. A private child support collector shall not collect or attempt to collect child support by means of any of the following conduct:~~

~~(a) Using, or threatening to use, physical force or violence or any criminal means to cause harm to the person, the reputation, or the property of any person.~~

~~(b) Threatening that the failure to pay a child support obligation will result in an accusation that the obligor has committed a crime where the accusation, if made, would be false.~~

~~(c) Communicating, or threatening to communicate, to any person the fact that an obligor has engaged in conduct, other than the failure to pay a child support obligation, which the private child support collector knows or has reason to believe will defame the obligor.~~

~~(d) Threatening to any person that nonpayment of the child support obligation may result in the arrest of the obligor or the seizure, garnishment, attachment, or sale of any property or the~~



1 ~~garnishment or attachment of wages of the obligor, unless that~~  
2 ~~action is in fact permitted by the law.~~

3 ~~(e) Threatening to take any action against the obligor which~~  
4 ~~the private child support collector has no authority to take.~~

5 ~~(f) Using obscene or profane language.~~

6 ~~(g) Placing telephone calls without disclosing the identity of~~  
7 ~~the private child support collector.~~

8 ~~(h) Causing expense to any person for long distance telephone~~  
9 ~~calls, telegram fees, or charges for other similar communications;~~  
10 ~~by misrepresenting to that person the purpose of a telephone call,~~  
11 ~~telegram, or similar communication.~~

12 ~~(i) Causing a telephone to ring repeatedly or continuously to~~  
13 ~~annoy the person called.~~

14 ~~(j) Communicating, by telephone or in person, with the obligor~~  
15 ~~with a frequency that is unreasonable and constitutes harassment~~  
16 ~~to the obligor under the circumstances.~~

17 ~~(k) Communicating with the obligor's employer regarding the~~  
18 ~~obligor's child support obligation unless such a communication~~  
19 ~~is necessary to the collection of the obligation, or unless the~~  
20 ~~obligor or his attorney has consented in writing to such~~  
21 ~~communication. A communication is necessary to the collection~~  
22 ~~of the obligation only if it is made for the purposes of verifying~~  
23 ~~the obligor's employment, locating the obligor, or effecting~~  
24 ~~garnishment of the obligor's wages.~~

25 ~~(l) Falsely representing that any person is an attorney or~~  
26 ~~counselor at law.~~

27 ~~(m) Falsely representing that any private child support~~  
28 ~~collector is vouched for, bonded by, affiliated with, or is an~~  
29 ~~instrumentality, agent, or official of any federal, state, or local~~  
30 ~~government or any agency of federal, state, or local government.~~

31 ~~(n) Falsely representing that a private child support collector is~~  
32 ~~a consumer reporting agency or falsely representing that~~  
33 ~~information concerning an obligor's failure or alleged failure to~~  
34 ~~pay a child support obligation has been, or is about to be, referred~~  
35 ~~to a consumer reporting agency.~~

36 ~~(o) Initiating communications, other than statements of~~  
37 ~~account, with the obligor with regard to the obligation, when the~~  
38 ~~private child support collector has been previously notified in~~  
39 ~~writing by the obligor's attorney that the obligor is represented~~  
40 ~~by that attorney with respect to the obligation and the notice~~

1 includes the attorney's name and address and a request by the  
2 attorney that all communications regarding the child support  
3 obligation be addressed to that attorney, unless the attorney fails  
4 to answer correspondence, return telephone calls, or discuss the  
5 obligation in question. This subdivision does not apply if prior  
6 approval has been obtained from the obligor's attorney, or if the  
7 communication is a response in the ordinary course of business  
8 to an obligor's inquiry.

9 5623. (a) In addition to any other remedy provided by this  
10 chapter, a person may bring an action for any of the following:

11 (1) Injunctive relief to enjoin or restrain a violation of this  
12 chapter.

13 (2) Actual damages incurred as a result of a violation of this  
14 chapter.

15 (b) A person who prevails in an action brought pursuant to this  
16 section is entitled to recover court costs and reasonable attorney's  
17 fees.

18 (c) On a finding by a court that an action pursuant to this  
19 section was brought in bad faith or for purposes of harassment,  
20 the court shall award the defendant attorney's fees reasonably  
21 related to the work performed and costs.

22 5624. (a) A violation of this chapter is a deceptive trade  
23 practice under the laws of this state and is actionable under those  
24 laws.

25 (b) This chapter does not affect or alter a remedy at law or in  
26 equity otherwise available to an obligor, obligee, governmental  
27 entity, or other legal entity.

28 (c) A private child support collector does not violate this  
29 chapter if the action complained of resulted from a bona fide  
30 error that occurred notwithstanding the use of reasonable  
31 procedures to avoid the error.

32 (2) A contract shall automatically terminate when the contract  
33 term has expired or the contract amount has been collected,  
34 whichever occurs sooner.

35 (3) No private child support collector shall take an  
36 assignment of the support obligation.

37 (d) (1) A private child support collector shall provide to an  
38 obligee all of the following information:

1     (A) The name of, and other identifying information relating to,  
2     any obligor who made child support payments collected by the  
3     private child support collector.

4     (B) The amount of support collected by the private child  
5     support collector.

6     (C) The date on which each amount was received by the  
7     private child support collector.

8     (D) The date on which each amount received by the private  
9     child support collector was sent to the obligee.

10    (E) The amount of the payment sent to the obligee.

11    (F) The source of payment of support collected and the actions  
12    affirmatively taken by the private child support collector that  
13    resulted in the payment.

14    (G) The amount and percentage of each payment kept by the  
15    private child support collector as its fee.

16    (2) The information required by paragraph (1) shall either be  
17    made available by mail, telephone, or via secure Internet access.  
18    If provided by mail, the notice shall be sent at least quarterly.  
19    Information accessed by telephone and the Internet shall be up to  
20    date.

21    (e) (1) A private child support collector shall maintain records  
22    of all child support collections made on behalf of a client who is  
23    an obligee. The records required under this section shall be  
24    maintained by the private child support collector for the duration  
25    of the contract plus for a period of four years and four months  
26    from the date of the last child support payment collected by the  
27    private child support collector on behalf of an obligee. In  
28    addition to information required by subdivision (d), the private  
29    child support collector shall maintain the following:

30    (A) A copy of the order establishing the child support  
31    obligation under which a collection was made by the private  
32    child support collector.

33    (B) Records of all correspondence between the private child  
34    support collector and the obligee or obligor in a case.

35    (C) Any other pertinent information relating to the child  
36    support obligation, including any case, cause, or docket number  
37    of the court having jurisdiction over the matter and official  
38    government payment records obtained by the private child  
39    support collector on behalf of, and at the request of, the obligee.

1     (2) *A private child support collector shall safeguard case*  
2 *records in a manner reasonably expected to prevent intentional*  
3 *or accidental disclosure of confidential information pertaining to*  
4 *the obligee or obligor, including providing necessary protections*  
5 *for records maintained in an automated system.*

6     (3) *Every person who contracts with a private child support*  
7 *collector shall have the right to review all files and documents,*  
8 *both paper and electronic, in the possession of the private child*  
9 *support collector regarding that obligee's case that are not*  
10 *required by law to be kept confidential. The obligee, during*  
11 *regular business hours, shall be provided reasonable access to*  
12 *and copies of the files and records of the private child support*  
13 *collector regarding all moneys received, collection attempts*  
14 *made, fees retained or paid to the private child support collector,*  
15 *and moneys disbursed to the obligee. The private child support*  
16 *collector may not charge a fee for access to the files and records,*  
17 *but may require the obligee to pay up to three cents (\$.03) per*  
18 *page for the copies prior to their release.*

19     (f) *A private child support collector shall not do any of the*  
20 *following:*

21     (1) *Collect or attempt to collect child support by means of any*  
22 *conduct which is prohibited of a debt collector collecting a*  
23 *consumer debt under Sections 1788.10 to 1788.16, inclusive, of*  
24 *the Civil Code.*

25     (2) *Misstate the amount of the fee that may be lawfully paid*  
26 *the private child support collector for the performance of the*  
27 *contract or the identity of the person who is obligated to pay that*  
28 *fee.*

29     (3) *Make a false representation of the amount of child support*  
30 *to be collected. A private child support collector is not in*  
31 *violation of this provision if it reasonably relied on evidence*  
32 *provided by the government entity collecting child support, a*  
33 *court with jurisdiction over the support obligation, or from the*  
34 *obligee, or upon proof provided by the obligor.*

35     (4) *Ask any party other than the obligor to pay the child*  
36 *support obligation, unless that party is legally responsible for the*  
37 *obligation or is the legal representative of the obligor.*

38     (g) (1) *A person may bring an action for actual damages*  
39 *incurred as a result of a violation of this section.*

1     (2) *In addition to actual damages, a private child support*  
2 *collector who willfully and knowingly violates the provisions of*  
3 *this section shall be liable for a civil penalty in an amount*  
4 *determined by the court, which may not be less than one hundred*  
5 *dollars (\$100) nor more than one thousand dollars (\$1,000).*

6     (3) *A person who prevails in an action brought pursuant to*  
7 *this section is entitled to recover court costs. Reasonable*  
8 *attorney's fees shall be awarded to a prevailing obligee or*  
9 *obligor. On a finding by a court that an action pursuant to this*  
10 *section was brought by an obligee or obligor in bad faith or for*  
11 *purposes of harassment, the court shall award the private child*  
12 *support collector attorney's fees reasonably related to the work*  
13 *performed and costs.*

14     (4) *A private child support collector is not in violation of this*  
15 *section if the private child support collector shows, by a*  
16 *preponderance of the evidence, that the action complained of*  
17 *was not intentional and resulted from a bona fide error that*  
18 *occurred notwithstanding the use of reasonable procedures to*  
19 *avoid the error.*

20     (5) *The remedies provided in this subdivision are cumulative*  
21 *and are in addition to any other procedures, rights, or remedies*  
22 *available under other provision of the law.*

23     (h) *Any waiver of the rights, requirements, and remedies*  
24 *provided by this section violates public policy and is void.*